

Article 3. APPLICATION PROCEDURES**101167 TRANSFER AND SALE****101167**

- (a) A license is not transferable.
- (1) If the sale of a licensed child care center will result in the issuance of a new license, the requirements of Health and Safety Code Section 1597.14 apply.

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Health and Safety Code Section 1597.14 reads in pertinent part:

- (a) Notwithstanding Section 1596.858, in the event of a sale of a licensed child day care center where the sale will result in a new license being issued, the sale and transfer of property and business shall be subject to both of the following:
- (1) The licensee shall provide written notice to the department and to the child's parent or his or her legal guardian of the licensee's intent to sell the child day center at least 30 days prior to the transfer of the property or business, or at the time that a bona fide offer is made, whichever period is longer.
- (2) The licensee shall, prior to entering into an admission agreement, inform the child's parent or his or her legal guardian, admitted to the facility after notification to the department, of the licensee's intent to sell the property or business.
- (b) Except as provided in subdivision (e), the property and business shall not be transferred until the buyer qualifies for a license or provisional license pursuant to this chapter.
- (1) The seller shall notify, in writing, a prospective buyer of the necessity to obtain a license, as required by this chapter, if the buyer's intent is to continue operating the facility as a child day care center. The seller shall send a copy of this written notice to the licensing agency.
- (2) The prospective buyer shall submit an application for a license, as specified in Section 1596.95, within five days of the acceptance of the offer by the seller.
- (c) No transfer of the facility shall be permitted until 30 days have elapsed from the date when notice has been provided to the department pursuant to paragraph (1) of subdivision (a).

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- (d) The department shall give priority to applications for licensure that are submitted pursuant to this section in order to ensure timely transfer of the property and business. The department shall make a decision within 60 days after a complete application is submitted on whether to issue a license pursuant to Section 1596.95.
- (e) If the parties involved in the transfer of the property and business fully comply with this section, then the transfer may be completed and the buyer shall not be considered to be operating an unlicensed facility while the department makes a final determination on the application for licensure.

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- (2) In the event of the sale and transfer of property and business, the applicant (buyer) shall be issued an Emergency Approval to Operate (EAO) (LIC 9117 [4/93]) if the applicant (buyer) complies with Health and Safety Code Section 1597.14.
- (3) The applicant (buyer) who is issued an EAO (LIC 9117 [4/93]) shall perform all the duties, functions and responsibilities required of a licensee.
- (4) Failure to comply with licensing laws and regulations under this section, as determined by the Department, shall result in the denial of the application for a license. This denial shall also constitute termination of the EAO (LIC 9117 [4/93]).
- (5) The Department shall provide to the applicant (buyer) written notification of the denial. This notice shall be effective immediately upon receipt.
- (b) "A bona fide offer," as specified in Health and Safety Code Section 1597.14(a)(1), means a proposal by the buyer to purchase the child care center with definite terms in writing communicated to the seller and accompanied by a cash deposit.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.81 and 1597.14, Health and Safety Code.

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- (a) Any adult may apply for a license regardless of age, sex, race, religion, color, political affiliation, national origin, disability, marital status or sexual orientation.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73 and 1596.81, Health and Safety Code.

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- (a) Any adult, partnership, corporation, county, city, public agency or other governmental entity wishing to obtain a license shall fill out and file with the Department an Application Booklet (LIC 281A [12/96]), as well as submit to the Department the documents specified in Section 101169(d) below.

- (1) Applicants for licensure of a combination center may file one application.

- (A) Licensees requesting the addition of a toddler component to their preschool or infant care program shall submit an amended application consisting of an Application for a Child Day Care Center License (LIC 200A [12/92]); a program description; a sketch of the center showing where the toddler component will be located; a schedule for outdoor activities; and, if necessary, a fire clearance. The toddler program component is considered an extension of the preschool or infant care license.

- (2) Each separately licensed component of a single program shall be capable of independently meeting the provisions of applicable regulations as determined by the Department.

- (3) The Department has the authority to issue one license to a single program, or to a separately licensed component of a single program, that is located in multiple buildings at a common address.

- (b) Prior to filing an LIC 281A (12/96) and the documents specified in Section 101169(d) below, the applicant shall attend an orientation provided by the Department.

- (1) The orientation shall cover, but not be limited to, the following areas:

- (A) How to complete the application process.

- (B) Scope of child care center operation subject to regulation by the Department.

- (2) A licensee applying for another child care center license need not attend another orientation within two years of completing a previous orientation.

- (3) An applicant applying for more than one child care center license is only required to attend one orientation.

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- (c) The applicant/licensee shall cooperate with the Department in providing verification and/or documentation as requested by the Department.
- (d) The LIC 281A (12/96) and supporting documents shall together contain the following:
- (1) Name (or proposed name) and address of the child care center.
 - (2) Name, and residence and mailing addresses of applicant.
 - (A) If the applicant is a partnership, copies of the partnership agreement and all documents governing the partnership, as well as the name and principal business address of each partner.
 - (B) If the applicant is a corporation, the name, title and principal business address of each officer and member of the governing board.
 - (C) If the applicant is a corporation that issues stock, the name and address of each person owning more than 10 percent of stock in the corporation.
 - (D) If the applicant is a corporation, a copy of the articles of incorporation, the constitution, the bylaws, and the board resolution authorizing the submission of the application.
 - (3) If the applicant is leasing or renting the premises of the child care center, a copy of the lease or rental agreement and the name, address and telephone number of the property owner.
 - (4) The category of child care center to be operated.
 - (5) Maximum number of children to be served.
 - (6) Age range and the categories of children to be served including, but not limited to, children with disabilities and/or nonambulatory children.
 - (7) Hours or periods of operation of the child care center.
 - (8) Name of administrator.
 - (9) Information required by Health and Safety Code Section 1596.95(d).

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- (A) Health and Safety Code Section 1596.95(d) provides:

Disclosure of the applicant's prior or present service as an administrator, general partner, corporate officer or director of, or as a person who has held or holds a beneficial ownership of 10 percent or more in any child day care facility or in any facility licensed pursuant to Chapter 1 (commencing with Section 1200) or Chapter 2 (commencing with Section 1250) or Chapter 3 (commencing with Section 1500).

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- (10) Information required by Health and Safety Code Section 1596.95(e).

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- (A) Health and Safety Code Section 1596.95(e) provides in general:

Disclosure of revocation or other disciplinary action taken or in the process of being taken against a license held or previously held by the entities specified in Health and Safety Code Section 1596.95(d) above.

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- (11) Name, address and telephone number of the city or county fire departments, the district providing fire protection services, or the State Fire Marshal's office with jurisdiction in the area where the child care center is located.
- (12) A plan of operation as specified in Section 101173.
- (13) Fingerprint cards as specified in Section 101170.
- (14) Requests to check the Child Abuse Registry as required by Health and Safety Code Section 1596.877.

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- (A) Health and Safety Code Section 1596.877 provides:
- (1) Prior to granting a license to any individual to or otherwise approving, any family day care home, the department shall check the child abuse and neglect complaint records of the child protective services agency of the county in which the applicant has resided for the two years preceding the application.
 - (2) Prior to granting a license to or otherwise approving any individual to care for children in either a family day care home or a day care center, the department shall check the Child Abuse Registry pursuant to paragraph (3) of subdivision (b) of Section 11170 of the Penal Code.
 - (3) The department shall investigate any reports received from the Child Abuse Registry and investigate any information received from the county child protective services agency. However, child protective services agency information arising from a report designated as "unfounded," as defined pursuant to subdivision (a) of Section 11165.12 of the Penal Code, shall not be included in the investigation. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective agency which investigated the child abuse report. The department shall not deny a license based upon a report from the Child Abuse Registry or based on child abuse and neglect complaint records of the county child protective services agency unless child abuse is substantiated.

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- (15) A health-screening report on the applicant as specified in Section 101216(g).
- (16) The processing fee for an application as specified in Section 101187.
- (17) Water supply clearance as specified in Section 101172.
- (18) Evidence that the applicant has posted signs at the entrance to the child care center that provide the telephone number of the local health department and information on child passenger restraint systems pursuant to Health and Safety Code Section 1596.95(g) and Vehicle Code Section 27360(b).

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- (A) The signs shall provide all of the following information:
1. Protect your child--it is the law.
 2. Children under the age of four years, regardless of weight, or weighing less than 40 pounds, regardless of age, must be in an approved child passenger restraint system.
 3. You may be cited for a violation of the child passenger restraint system provisions. In addition, your automobile insurance rates could be adversely affected as a result.
 4. Call your local health department for more information.
- (19) Such other information as may be required pursuant to Health and Safety Code Section 1596.95(h).

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- (A) Health and Safety Code Section 1596.95(h) provides:

Any other information as may be required by the department for the proper administration and enforcement of this act.

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- (20) Evidence regarding the applicant's reputable and responsible character as required by Health and Safety Code Section 1596.95(b).

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- (A) Health and Safety Code Section 1596.95(b) reads in pertinent part:

Evidence satisfactory to the department that the applicant is a reputable and responsible character. This evidence shall include, but not be limited to, a criminal record clearance pursuant to Section 1596.871, employment history, and character references. If the applicant is a firm, association, organization, partnership, business trust, corporation, or company, evidence of reputable and responsible character shall be submitted as to the members or shareholders thereof, and the person in charge of the day care center for which application for issuance of license or special permit is made.

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- (e) The application shall be signed by the applicant.
- (1) If the applicant is a partnership, the application shall be signed by each partner.
- (2) If the applicant is a corporation, county, city, public agency or other governmental entity, the application shall be signed by the chief executive officer or the authorized representative.
- (f) The application shall be filed with the Department's office that serves the geographical area in which the child care center is located.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.81(b), 1596.83, 1596.856, 1596.877, 1596.95, 1596.955, and 1596.956, Health and Safety Code.

101170	CRIMINAL RECORD CLEARANCE	101170
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- (a) The Department shall conduct a criminal record review of all persons specified in Health and Safety Code Section 1596.871(b). The Department has the authority to approve or deny a facility license, or employment, residence or presence in the facility, based on the results of this review.

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- (1) Section 1596.871(a) of the Health and Safety Code states:

Before issuing a license or special permit to any person to operate or manage a day care facility, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation, or arrested for any crime specified in Section 290 of the Penal Code or arrested for violating Section 245, 273.5 subdivision (b) of Section 273a, or prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, if any, of those persons. No fee shall be charged by the Department of Justice or the department for the fingerprinting of an applicant who will serve six or fewer children or any family day care applicant for a license or for obtaining a criminal record of such an applicant pursuant to this section. If it is found that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the Department of Justice shall notify the Department of Social Services of that fact and the application shall be denied, unless the director grants an exemption pursuant to subdivision (f). If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the California Department of Social Services with a statement of that fact.

- (2) Section 1596.871(b) of the Health and Safety Code provides in part:

In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

- (A) Adults responsible for administration or direct supervision of staff.
- (B) Any person, other than a child, residing in the facility.
- (C) Any person who provides care and supervision to the children.

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- (D) Any staff person or employee who has frequent and routine contact with the children. In determining who has frequent contact, any volunteer who is in the facility shall be exempt unless the volunteer is used to replace or supplement staff in providing direct care and supervision of children in care. In determining who has routine contact, staff and employees under direct on site supervision and who are not providing direct care and supervision or who have only occasional or intermittent contact with children shall be exempt.
- (E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity, or a person designated by the chief executive officer as responsible for the operation of the facility, as designated by the applicant agency.
- (F) If the applicant is a local educational agency, the president of the governing board, the school district superintendent, or a person designated to administer the operation of the facility, as designated by the local educational agency.
- (G) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.
- (H) This section does not apply to adult volunteers or adult staff employed by the applicant on an intermittent basis for less than 10 days per month, provided that these adults are under constant supervision by adults who meet the requirements of this section.

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- (I) This section does not apply to employees of child care and development programs under contract with the State Department of Education who have completed a criminal records clearance as part of an application to the State Commission on Teacher Credentialing, and who possess a current credential or permit issued by the commission, including employees of child care and development programs that serve both children subsidized under, and children not subsidized under, a California Department of "Education contract." The State Commission on Teacher Credentialing shall notify the department upon revocation of a current credential or permit issued to an employee of a child care and development program under contract with the State Department of Education.
- (J) This section does not apply to employees of a child care and development program operated by a school district, county office of education, or community college district under contract with the California Department of Education who have completed a criminal records clearance as a condition of employment. The school district, county office of education, or community college district upon receiving information that the status of an employee's criminal record clearance has changed shall submit that information to the department.

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- (b) The Department shall receive a fingerprint clearance on the applicant, the administrator and all adults residing in the facility prior to issuing a license.
- (c) All persons subject to criminal record review shall, prior to employment, residence or initial presence in the facility, be fingerprinted and sign a statement regarding prior criminal convictions as specified in Section 101216(i).
- (1) Completed fingerprint card(s) shall be submitted to the Department of Justice as specified in Health and Safety Code Section 1596.871(c).

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- (2) Section 1596.871(c) of the Health and Safety Code provides in part:
- (A) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a child day care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the Department of Justice not later than four calendar days following employment, residence, or initial presence in the child day care facility.
 - (B) These fingerprints shall be on a card provided by the California Department of Social Services for the purpose of obtaining a permanent set of fingerprints. Fingerprints not submitted to the Department of Justice, as required in this section, shall result in the citation of a deficiency and the fingerprints shall then be submitted to the California Department of Social Services for processing...

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- (d) In determining whether individuals must submit fingerprint card(s) as specified in Health and Safety Code Section 1596.871(b), the Department shall consider the following:
- (1) Anticipated type and degree of contact with the children.
 - (2) Supervision received by the employee or volunteer.
 - (3) Duties of the employee or volunteer.
 - (4) Whether the facility constitutes the legal residence or the place an adult lives the majority of the time.

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- (5) Section 1596.871(h) of the Health and Safety Code states:
- (A) For the purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another as long as the criminal record clearance has been processed through a state licensing district office and is being transferred to another state licensing district office.
 - (B) The California Department of Social Services shall hold criminal records clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal records clearances to be transferred.

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- (e) The reasons for any exemption granted shall be in writing and shall be kept by the Department.
- (f) If the criminal record transcript of any of the persons specified in Health and Safety Code Section 1596.871(b) discloses a plea or verdict of guilty, or a conviction following a plea of nolo contendere, for any crime other than a minor traffic violation for which the fine was \$50 or less before April 5, 1984, or pursuant to paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code after April 4, 1984, the Department shall take the following actions:
- (1) For initial applicants, denial of the application.
 - (2) For current licensees, institution of legal remedies including, but not limited to, revocation of the license.
 - (3) For current or prospective employees, denial of the application or revocation of the license if the person continues to provide services and/or reside at the facility.
 - (4) For convicted persons residing in the facility, including spouses of the applicant, licensee or employee, denial of the application or revocation of the license if the person continues to provide services and/or reside at the facility.

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- (5) Section 1596.871(c)(3) of the Health and Safety Code provides in part:
- (A) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the department, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, or has been convicted of an offense specified in Section 243.4, 273a, 273d or subdivision (a) or (b) of Section 368 of the Penal Code, or has been convicted of a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the child day care facility, or bar the person from entering the child day care facility. The department may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime except a minor traffic violation, the licensee shall, upon notification by the California Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the child day care facility, or bar the person from entering the child day care facility; or (2) seek an exemption pursuant to subdivision (f). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered.
 - (B) The department may issue an exemption on its own motion pursuant to subdivision (f) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.
 - (C) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

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- (6) Section 1596.871(e) of the Health and Safety Code provides in part:

The California Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident or arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client.

- (7) Section 243.4 of the Penal Code provides in part:

(A) Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, gratification, or abuse, is guilty of sexual battery. Such an act is punishable by either imprisonment in the county jail for not more than one year or in the state prison for two, three, or four years.

(B) Any person who touches an intimate part of another person who is institutionalized for medical treatment and who is seriously disabled or medically incapacitated, if the touching is against the will of the person touched, and if the touching is for the purpose of sexual arousal, gratification, or abuse, is guilty of sexual battery. Such an act is punishable by either imprisonment in the county jail for not more than one year or in the state prison for two, three, or four years.

- (8) Section 273a of the Penal Code provides:

(A) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for 2, 4 or 6 years.

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- (B) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor.
- (9) Section 273d of the Penal Code provides:
- (A) Any person who willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for 2, 4 or 6 years, or in the county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000) or by both.
- (10) Section 368 of the Penal Code provides:
- (A) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for two, three, or four years.
- (B) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health may be endangered, is guilty of a misdemeanor.

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- (g) After a review of the criminal record transcript, the Department has the authority to grant an exemption from (f) above if such person requests an exemption in writing and presents evidence satisfactory to the Department that he/she has been rehabilitated and presently is of such good character as to justify being issued a license or being cleared to provide services in the facility.
- (1) The Department has the authority to consider factors including, but not limited to, the following as evidence of good character and rehabilitation:
- (A) The nature of the crime.
 - (B) Period of time since the crime was committed and number of offenses.
 - (C) Circumstances surrounding the commission of the crime that would demonstrate the unlikelihood of repetition.
 - (D) Activities since conviction, including employment or participation in therapy or education, that would indicate changed behavior.
 - (E) A full and unconditional pardon granted by the Governor.
 - (F) Character references.
 - (G) A certificate of rehabilitation from a superior court.

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- (2) Section 1596.871(f) of the Health and Safety Code provides in part:

No exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4 or 264.1 or subdivision (a) of Section 273a, or prior to January 1, 1994, paragraph (1) of Section 273a or Section 273d or Section 288, 289 or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

- (A) Section 667.5(c) of the Penal Code provides in part:

For the purpose of this section, "violent felony" shall mean any of the following:

1. Murder or voluntary manslaughter.
2. Mayhem.
3. Rape as defined in subdivision (2) of Section 261.
4. Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.
5. Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.
6. Lewd acts on a child under 14 as defined in Section 288.
7. Any felony punishable by death or imprisonment in the state prison for life.

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8. Any other felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7 or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in Section 12022.5 or 12022.55.
9. Any robbery perpetrated in an inhabited dwelling house or trailer coach, as defined in the Vehicle Code, or in the inhabited portion of any other building, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery.
10. Arson, in violation of subdivision (a) of Section 451.
11. The offense defined in subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.
12. Attempted murder.

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NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.81(b) and 1596.871, Health and Safety Code.

101171	FIRE CLEARANCE	101171
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- (a) All child care centers shall secure and maintain a fire clearance approved by the city or county fire department, the district providing fire protection services, or the State Fire Marshal.
- (1) The request for fire clearance shall be made through and maintained by the Department.
- (b) The applicant shall notify the Department if the child care center plans to enroll children who are nonambulatory, as defined in Section 101152n.(1), so that an appropriate fire clearance, approved by the city or county fire department, the district providing fire protection services, or the State Fire Marshal can be obtained prior to the acceptance of such children.

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- (1) Persons who use supportive restraints pursuant to Section 101223.1 are nonambulatory.

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NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.809, 1596.81, 1596.95 and 1597.95, Health and Safety Code.

101172	WATER SUPPLY CLEARANCE	101172
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- (a) All child care centers where water for human consumption is from a private source shall meet the following requirements:
- (1) As a condition of initial licensure, the applicant shall provide evidence of an onsite inspection of the source of the water and a bacteriological analysis that establishes the safety of the water. The inspection and the bacteriological analysis shall be conducted by the local health department, the California Department of Health Services or a licensed commercial laboratory.
- (2) Subsequent to initial licensure, the licensee shall provide evidence of a bacteriological analysis of the private water supply as frequently as is necessary to ensure the safety of the children, but no less frequently than specified in the following table:

LICENSED CAPACITY	ANALYSIS REQUIRED	PERIODIC SUBSEQUENT ANALYSIS
6 or fewer	Initial licensing	Not required unless evidence supports the need for such analysis to protect children.
7 through 15	Initial licensing	Annually
16 through 24	Initial licensing	Semiannually
25 or more	Initial licensing	Quarterly

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.81, 1596.95 and 1597.05, Health and Safety Code.

101173	PLAN OF OPERATION	101173
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- (a) Each licensee shall have and keep on file a current written, definitive plan of operation. A copy of the plan shall be submitted to the Department with the license application.
- (b) The plan and related materials shall contain the following:
- (1) Statement of purposes, and program methods and goals.
 - (2) Statement of admission policies and procedures.
 - (3) A copy of the admission agreement.
 - (4) Administrative organization, if applicable.
 - (5) Staffing plan, qualifications and duties, if applicable.
 - (6) Plan for in-service education of staff if required by regulations governing the specific child care center category.
 - (7) A sketch of the building(s) to be occupied, including a floor plan that describes the capacities of the buildings and the uses intended, the room dimensions, and the rooms to be used for nonambulatory children; and a sketch of the grounds that shows buildings, driveways, fences, storage areas, pools, gardens, recreation areas and other space used by the children. All sketches shall show dimensions.
 - (8) Sample menus and a schedule for one calendar week indicating the time of day that meals and snacks are to be served.
 - (9) Transportation arrangements provided by the applicant/licensee for children who do not have independent arrangements.
 - (10) Rate-setting policy including, but not limited to, a policy on refunds.
 - (11) Consultant and community resources to be utilized by the child care center as part of its program.
- (c) Any proposed changes in the plan of operation that affect services to children shall be subject to departmental approval prior to implementation and shall be reported as specified in Section 101212.
- (d) The child care center shall operate in accordance with the terms specified in the plan of operation.

NOTE: Authority cited: Section 1596.81, Health and Safety Code: Reference: Sections 1596.72, 1596.73, 1596.81, 1596.95 and 1597.05, Health and Safety Code.

101174	DISASTER AND MASS CASUALTY PLAN	101174
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- (a) Each licensee shall have a disaster and mass casualty plan of action. The plan shall be in writing and shall be readily available.
- (b) The plan shall be subject to review by the Department and shall include:
 - (1) Designation of administrative authority and staff assignments.
 - (2) Contingency plans for action during fires, floods and earthquakes including, but not limited to, the following:
 - (A) Fire safety plan.
 - (B) Means of exiting.
 - (C) Transportation arrangements.
 - (D) Relocation sites that are equipped to provide safe temporary accommodations for children.
 - (E) Supervision of children during evacuation or relocation, and contact after relocation to ensure that relocation has been completed as planned.
 - (F) Means of contacting local agencies, including but not limited to the fire department, law enforcement agencies, and civil defense and other disaster authorities.
 - (3) Any special methods and procedures necessary for the evacuation and relocation of nonambulatory children.
- (c) The licensee shall instruct all children, age and abilities permitting, and all child care personnel, including volunteers, in their duties and responsibilities under the plan.
- (d) Disaster drills shall be conducted at least every six months.
 - (1) Completion of such drills shall not require travel away from the child care center grounds or contact with local disaster agencies.
 - (2) The drills shall be documented. This documentation shall be kept in the child care center for at least one year.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.81, 1596.95 and 1597.05, Health and Safety Code.

101175	WAIVERS AND EXCEPTIONS FOR PROGRAM FLEXIBILITY	101175
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- (a) Unless the licensee receives prior written departmental approval for a waiver or an exception as specified in (b) below, the licensee shall maintain continuous compliance with all licensing regulations.
- (b) The Department has the authority to approve the use of alternate concepts, programs, services, procedures, techniques, equipment, space, personnel qualifications or staffing ratios, or the conduct of experimental or demonstration projects, under the following circumstances:
 - (1) Such alternatives shall be carried out with provisions for safe and adequate services, and shall in no instance be detrimental to the health and safety of any child in care.
 - (2) The applicant or licensee shall submit to the Department a written request for a waiver or an exception and substantiating evidence supporting the request.
 - (3) Within 30 days of the receipt of a request for a waiver or an exception, the Department shall notify the applicant or licensee in writing of the approval or denial of the request, or of the need for additional information to substantiate the request.
 - (A) The licensee shall maintain and make available for review, at the child care center, a copy of the written approval or denial.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73 and 1596.81, Health and Safety Code.

101178	APPLICATION REVIEW	101178
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- (a) If the applicant has not submitted all materials specified in Section 101169 within 90 days of the Department's receipt of the application, the Department shall notify the applicant in writing that the application is incomplete. This notice shall describe the materials that the applicant must submit to complete the application.
 - (1) If the applicant does not complete the application within 30 days after such notice, the application shall be deemed withdrawn provided that the Department has not denied or taken action to deny the application.
 - (A) The above requirement shall not apply to child care centers under construction.
- (b) The Department shall cease review of any application under the conditions specified in Health and Safety Code Section 1596.851.

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- (1) Health and Safety Code Section 1596.851 provides:
- (a) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant previously was issued a license under this act or under Chapter 1 (commencing with Section 1200) or Chapter 2 (commencing with Section 1250) or Chapter 3 (commencing with Section 1500), or Chapter 3.3 (commencing with Section 1569) and the prior license was revoked within the preceding two years, the department shall cease any further review of the application until two years shall have elapsed from the date of the revocation. Cessation of review shall not constitute a denial of the application.
- (b) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant had previously applied for a license under any of the chapters listed in subdivision (a) and the application was denied within the last year, the department shall cease further review of the application under either of the following circumstances as follows:
- (1) In cases where the applicant petitioned for a hearing, the department shall cease further review of the application until one year has elapsed from the effective date of the decision and order of the department upholding a denial.
- (2) In cases where the department informed the applicant of his or her right to petition for a hearing as specified in Section 1596.879 and the applicant did not petition for a hearing, the department shall cease further review of the application until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

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The department may continue to review the application if it has determined that the reasons for the denial of the application were due to circumstances and conditions which have been corrected or are no longer in existence. The cessation of review shall not constitute a denial of the application.

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- (2) The circumstances and conditions under which the Department may continue to review a previously denied application shall include, but not be limited to, the following:
 - (A) A fire clearance previously denied but now approved;
 - (B) An administrator who previously did not meet the minimum qualifications but now does; or
 - (C) A person with a criminal record previously associated with the center, which was the basis for license denial, but who is now no longer associated with the center.
- (3) This review shall not constitute approval of the application.
- (4) If the Department ceases review of an application, the application shall be returned to the applicant. The applicant shall be responsible for requesting the Department to resume reviewing the application pursuant to Health and Safety Code Section 1596.851.
- (c) The application processing fee is nonrefundable except as provided in Government Code Section 15378.

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- (1) Government Code Section 15378 reads in pertinent part:

...The regulations shall provide for the full reimbursement of any and all filing fees paid by a permit applicant whose application was not processed within the time limits adopted by an agency pursuant to this chapter, and whose appeal to the secretary or agency head was decided in the applicant's favor.

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NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.83, 1596.851 and 1596.95, Health and Safety Code.

101179	CAPACITY DETERMINATION	101179
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- (a) A license shall be issued for a specific capacity, which shall be the maximum number of children that can be cared for at any given time. The Department may issue a license for fewer children than requested.
- (b) The number of children for which the child care center is licensed to provide care and supervision shall be determined on the basis of the Department's application review, which shall take into consideration the following:
 - (1) The fire clearance specified in Section 101171.
 - (2) The licensee's/administrator's ability to comply with applicable laws and regulations.
 - (3) Physical features of the child care center, including available space, that are necessary to comply with this chapter.
 - (4) Number of available staff to meet the care and supervision needs of the children.
 - (5) Any restrictions pertaining to the specific category of child care center.
- (c) When the license is issued for fewer children than requested, the licensee shall be notified in writing of the reasons for the limitation and of the licensee's rights to appeal the decision as specified in Section 101205.
- (d) The Department has the authority to decrease existing licensed capacity with the licensee's agreement, when there is a change in any of the factors specified in (b) above.
 - (1) If the licensee does not agree to the decrease in capacity, the Department has the authority to initiate revocation action as specified in Section 101206.
- (e) The Department is authorized to restrict care to specific individuals.
 - (1) If care and supervision are limited to specific individuals, the Department shall specify the names of the individuals in a letter to the licensee.
 - (2) Except where the limitation is requested by the licensee, the licensee shall be notified in writing of the reasons for such limitation and of the licensee's right to appeal the decision as specified in Section 101205.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.81 and 1597.05, Health and Safety Code.

101180	WITHDRAWAL OF APPLICATION	101180
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- (a) An applicant may withdraw an application for a license.

The withdrawal of the application shall be in writing.

- (1) The fee for processing the application shall be forfeited.

- (b) As specified in Health and Safety Code Section 1596.854, the Department has the authority to take action against an applicant even if the applicant has withdrawn an application for a license.

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Health and Safety Code Section 1596.854 provides in part:

The withdrawal of an application for a license ... after it has been filed with the department shall not, unless the department consents in writing to the withdrawal, deprive the department of its authority to institute or continue a proceeding against the applicant for the denial of the license ... upon any ground provided by law or to enter an order denying the license ... upon any such ground.

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NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.803 and 1596.854, Health and Safety Code.

101181	PROVISIONAL LICENSE	101181
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- (a) The Department has the authority to issue a provisional license pursuant to Health and Safety Code Sections 1596.84 and 1596.96 provided the child care center is in substantial compliance with applicable laws and regulations, as defined in Section 101152s.(4), and has submitted a completed application as specified in Section 101152c.(8).

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- (1) Health and Safety Code Section 1596.84 reads in pertinent part:

The department may issue provisional licenses to operate day care facilities which the director determines are in substantial compliance with the provisions of the licensure requirements and the rules and regulations adopted pursuant thereto, provided, that no life safety risks are involved, as determined by the director. In determining whether any life safety risks are involved, the director shall require completion of all applicable fire clearances and criminal record clearances as otherwise required by the department's rules and regulations.

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101181	PROVISIONAL LICENSE (Continued)	101181
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- (b) The Department has the authority to issue a provisional license for a maximum of 90 days to otherwise qualified applicants who are not in compliance with the requirements for health and safety training as specified in Health and Safety Code Section 1596.866.
- (c) During the provisional license period, if the Department discovers any deficiencies that threaten the physical health, mental health, safety or welfare of the children, the Department has the authority to institute administrative action or civil proceedings, or to refer the case for criminal prosecution.
- (d) A provisional license terminates on the date specified on the provisional license or upon denial of the application, whichever is earlier.
 - (1) Health and Safety Code Section 1596.84 specifies how long and under what circumstances a provisional license may last.

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Health and Safety Code Section 1596.84 reads in pertinent part:

... The provisional license shall expire six months from the date of issuance, or at such earlier time as the director may determine. However, the director may extend the term of a provisional license for an additional six months time, if it is determined that more than six months will be required to achieve full compliance with licensing standards due to circumstances beyond the control of the applicant, provided all other requirements for a license have been met. In no case shall a provisional license be issued for more than 12 months.

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- (e) If the Department determines after its review specified in Section 101178 that the provisional licensee does not meet licensing requirements, the application shall be denied as specified in Section 101205; the provisional license shall immediately terminate; and operation shall immediately cease.
- (f) If the Department denies the application for a license, the applicant may appeal the denial as provided in Section 101205. Until the Director adopts a decision on the denial action, the child care center is unlicensed.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.81(b), 1596.84, 1596.866 and 1596.96, Health and Safety Code.

101182	ISSUANCE/TERM OF A LICENSE	101182
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- (a) The Department shall issue a license to an applicant in accordance with the provisions of Health and Safety Code Section 1597.13 after a completed application has been compiled and upon determination that all licensing requirements have been met.

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- (1) Health and Safety Code Section 1597.13 states:

The department and any local agency with which it contracts for the licensing of day care centers shall grant or deny an application for license within 30 days after receipt of all appropriate licensing application materials, as determined by the department, after a site visit has been completed and the facility has been found to be in compliance with licensing standards. The department shall conduct an initial site visit within 30 days after the receipt of all appropriate licensing application materials.

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- (2) A separate license shall be issued for each component of a combination center.
- (3) If the application is denied, the notice of denial shall include the information specified in Section 101205.
- (b) Issuance of a license shall constitute written notice that the application is complete and has been granted.
- (c) No limitation shall be imposed on the licensee or printed on the license solely because a licensee is a parent who has administered or will continue to administer corporal punishment not constituting child abuse, as defined in Penal Code Section 11165(g) or Health and Safety Code Section 1531.5(c), on his/her own child(ren).

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- (1) Whenever possible, the licensee shall not use corporal punishment on his/her own children in the presence of other children.

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101182	ISSUANCE/TERM OF A LICENSE (Continued)	101182
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- (d) Except for provisional licenses as provided in Section 101181, a license remains in effect until it is:
- (1) Forfeited or surrendered as specified in Sections 101186 through 101187 and in Health and Safety Code Section 1596.858.
 - (2) Suspended or revoked as specified in Section 101206.
- (e) As a condition of licensure, child care personnel shall complete health and safety training pursuant to Health and Safety Code Section 1596.866.

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- (1) Health and Safety Code Section 1596.866 provides in pertinent part:
- (a) In addition to any other required training, at least one director or teacher at each day care center ... shall have at least 15 hours of training on preventive health practices. The training shall include pediatric cardiopulmonary resuscitation, pediatric first aid, recognition, management, and prevention of infectious diseases, including immunizations, and prevention of childhood injuries. The training may include training in sanitary food handling, child nutrition, emergency preparedness and evacuation, caring for children with special needs, and identification and reporting of signs and symptoms of child abuse.
 - (b) A day care center director shall ensure that at least one staff member who has a current certificate in pediatric first aid and pediatric cardiopulmonary resuscitation issued by [the American Red Cross or the American Heart Association, or by] a training program that has been approved by the Emergency Medical Services Authority pursuant to this section and Section 1797.191 shall be available at all times when children are present at the facility, or when children are offsite of the facility for facility activities....
 - (c) All personnel and licensees described in subdivision (a) shall complete 15 hours of preventive health practices training as described in subdivision (a) on or before January 1, 1995, and completion of the health training shall be a condition of licensure.

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NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.81, 1596.858, 1596.866, 1596.95, 1596.96 and 1596.97, Health and Safety Code.

101184	APPLICATION FOR RENEWAL OF A LICENSE	101184
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Repealed by Manual Letter No. CCL-98-11, effective 11/1/98.

101185	SUBMISSION OF NEW APPLICATION	101185
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(a) A licensee shall file a new Application Booklet (LIC 281A [12/96]) and supporting documents as specified in Section 101169 whenever there is a proposed change of any of the following types:

(1) Child care center category.

(A) Notwithstanding (a) and (a)(1) above, a licensee wishing to add a toddler component to its existing preschool or infant care program shall submit an amended application as specified in Section 101169(a)(1)(A). The toddler program component is considered an extension of the preschool or infant care license.

(2) Sale or transfer of the majority of stock.

(3) Separating from a parent company.

(4) Merger with another company.

(5) Change of licensee.

(b) When a licensee proposes a change in capacity, a change in the number of nonambulatory children or a change in location, the licensee may, in lieu of filing an entirely new LIC 281A (12/96) and supporting documents as specified in Section 101169, transfer documents from an existing application to a new application. In such a case, the new application documents must include:

(1) An Application for a Child Day Care Center License (LIC 200A [12/92]).

(2) A fire clearance, if necessary.

(3) An update of existing application documents affected by the change, as determined by the Department.

101185	SUBMISSION OF NEW APPLICATION (Continued)	101185
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- (c) Licensees who transfer documents from an existing application to a new application, as specified in Section 101185(b) above, may pay a reduced application fee. For reduced fee information, please see Section 101187.

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- (d) A new LIC 281A (12/96) and supporting documents as specified in Section 101169 shall be filed whenever an applicant fails to complete a new application within the time limit required by Section 101178(a) if the applicant chooses to continue the application process.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.81, 1596.955 and 1596.956, Health and Safety Code.

101186	CONDITIONS FOR FORFEITURE OF A CHILD CARE CENTER LICENSE	101186
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- (a) Conditions for forfeiture of a child care center license shall be as specified in Health and Safety Code Section 1596.858.

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- (1) Health and Safety Code Section 1596.858 reads in part:

A license shall be forfeited by operation of law prior to its expiration date when one of the following occurs:

- (a) The licensee sells or otherwise transfers the facility or facility property, except when change of ownership applies to transferring of stock when the facility is owned by a corporation, and when the transfer of stock does not constitute a majority change in ownership.

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101186	CONDITIONS FOR FORFEITURE OF A CHILD CARE CENTER LICENSE (Continued)	101186
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- (b) The licensee surrenders the license to the department.
- (c) The licensee moves the facility from one location to another....
- (d) The licensee is convicted of an offense specified in Section 220, 243.4, or 264.1, or paragraph (1) of Section 273a, Section 273d, 288, or 289 of the Penal Code, or is convicted of another crime specified in subdivision (c) of Section 667.5 of the Penal Code.
- (e) The licensee dies....
- (f) The licensee abandons the facility.

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- (2) "Licensee abandons the facility [child care center]" shall mean either of the following:
 - (A) The licensee informs the Department that the licensee no longer accepts responsibility for the child care center; or
 - (B) The Department is unable to determine the licensee's whereabouts after the following:
 - 1. The Department requests information about the licensee's whereabouts from child care center staff, if any staff can be contacted; and
 - 2. The Department has made at least one phone call per day to the licensee's last telephone number of record for five consecutive workdays with no response; and
 - 3. The Department has sent a certified letter requesting the licensee to contact the Department to the licensee's last mailing address of record with no response within seven calendar days.

101186	CONDITIONS FOR FORFEITURE OF A CHILD CARE CENTER LICENSE (Continued)	101186
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- (b) If the licensee dies, an adult relative who has control of the property may operate a previously licensed child care center under an Emergency Approval to Operate (EAO) (LIC 9117 [4/93]) provided the following conditions are met:
- (1) The relative, or an adult acting on the relative's behalf, notifies the Department by telephone during the first working day after the licensee's death that the relative intends to operate the child care center.
 - (2) The relative files with the Department within five calendar days of the licensee's death an Application for a Child Day Care Center License (LIC 200A [12/92]) and evidence of the licensee's death as specified in Section 101152e.(4).
 - (A) Notwithstanding the instructions on the LIC 200A (12/92), the Department shall permit the relative to submit only the information on the front side of the LIC 200A (12/92).
 - (3) The relative files his/her fingerprint cards with the Department of Justice within five calendar days of the licensee's death.
- (c) If the adult relative complies with (b)(1) and (b)(2) above, he/she shall not be considered to be operating an unlicensed child care center pending the Department's decision on whether to approve a provisional license.
- (d) The Department shall make a decision within 60 days after the application is submitted on whether to issue a provisional license pursuant to Section 101181.
- (1) A provisional license shall be granted only if the Department is satisfied that the conditions specified in (b) above and Section 101181 have been met and that the health and safety of the children attending the child care center will not be jeopardized.

NOTE: Authority cited: Sections 1596.81 and 1596.858(e), Health and Safety Code. Reference: Sections 1596.845, 1596.858 and 1596.858(e), Health and Safety Code.

101187	APPLICATION/ANNUAL FEES	101187
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- (a) An applicant or licensee shall be charged application/annual fees as specified in Health and Safety Code Section 1596.803.

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- (1) Health and Safety Code Section 1596.803 reads in pertinent part:

- (a) (1) A fee adjusted by facility and capacity shall be charged by the department for the issuance of an original license to operate a child day care facility or for processing any application therefor. After initial licensure, the fee shall be charged by the department annually. The amount of the fee is for the purpose of financing a portion of the application and annual processing costs and the activities specified in subdivision (b). The fee shall be assessed as follows:

Fee Schedule

Facility Type	Capacity	Original Application	Annual Fee
...			
Day Care Centers	1 - 30	\$100	\$100
	31 - 60	\$200	\$200
	61 - 75	\$250	\$250
	76 - 90	\$300	\$300
	91 - 120	\$400	\$400
	121+	\$500	\$500

- (2) (A) Notwithstanding paragraph (1), any licensee, including, but not limited to, public agencies with more than one licensed facility shall pay no more than five hundred dollars (\$500) for the original application and five hundred dollars (\$500) for the annual fee if the capacity is less than 1,000 children in the aggregate. Any licensee, including, but not limited to, public agencies with more than one licensed facility shall pay no more than one thousand dollars (\$1,000) for the original application and one thousand dollars (\$1,000) for the annual fee if the capacity is 1,000 children or more in the aggregate.

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- (B) Notwithstanding subparagraph (A), the fees provided for in paragraph (1) shall also apply to any for-profit corporation, person, firm, association, or partnership holding 25 or more day care center licenses....
- (c) A child day care facility may use a bona fide business or personal check to pay the license fee required under this section.
- (d) Failure to pay required license fees, including the finding of insufficient funds to cover bona fide business or personal checks submitted for this purpose, shall constitute grounds for denial of a license or special permit or forfeiture of a license or special permit.
- (e) The department shall assess the fees on an annual basis and may set time periods to spread the license's due dates throughout the year. The fees shall be considered delinquent 30 days after the billing date.

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- (b) When a licensee moves a child care center from one location to another, the application fee shall be one-half of the original application amount for the capacity specified above.
 - (1) To receive the reduced fee, the following shall apply:
 - (A) The licensee has notified the Department before actually relocating the child care center.
 - (B) The child care center licensing category remains the same.
 - (C) The fee is based on the capacity requested for the new location.
- (c) The application and annual fees are nonrefundable except as specified in Section 101178(c).

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.803 and 1596.81, Health and Safety Code.

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